

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 991

Introduced by Assembly Member Silva

February 27, 2009

An act to amend Sections 301.5, ~~1300~~, 301.7, 1300, 1301, 1502.1, 2115, 2117.1, 25014.7, 25100, 25101, 25117, 25211, 25219, 25231, and 25247 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 991, as amended, Silva. Corporations: NASDAQ: national securities exchange.

Existing law regulates the operations of corporations, including, without limitation, elections of boards of directors and qualification with the Commissioner of Corporations of securities offerings in specified transactions, based on, among other things, whether a security is traded on a national securities exchange or is listed on the National Market System of the NASDAQ Stock Market. Existing law governing broker-dealers, investment advisers, and investment adviser representatives references the National Association of Securities Dealers.

This bill would change references to the NASDAQ Stock Market to reflect existing federal law designating that market as a national securities exchange. *The bill would change references to the American Stock Exchange to reflect its current name, the NYSE Amex.* The bill would also change references to the National Association of Securities Dealers to reflect its current name, the Financial Industry Regulatory Authority, and make other technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 301.5 of the Corporations Code is
2 amended to read:

3 301.5. (a) A listed corporation may, by amendment of its
4 articles or bylaws, adopt provisions to divide the board of directors
5 into two or three classes to serve for terms of two or three years
6 respectively, or to eliminate cumulative voting, or both. After the
7 issuance of shares, a corporation that is not a listed corporation
8 may, by amendment of its articles or bylaws, adopt provisions to
9 be effective when the corporation becomes a listed corporation to
10 divide the board of directors into two or three classes to serve for
11 terms of two or three years respectively, or to eliminate cumulative
12 voting, or both. An article or bylaw amendment providing for
13 division of the board of directors into classes, or any change in the
14 number of classes, or the elimination of cumulative voting may
15 only be adopted by the approval of the board and the outstanding
16 shares (Section 152) voting as a single class, notwithstanding
17 Section 903.

18 (b) If the board of directors is divided into two classes pursuant
19 to subdivision (a), the authorized number of directors shall be no
20 less than six and one-half of the directors or as close an
21 approximation as possible shall be elected at each annual meeting
22 of shareholders. If the board of directors is divided into three
23 classes, the authorized number of directors shall be no less than
24 nine and one-third of the directors or as close an approximation
25 as possible shall be elected at each annual meeting of shareholders.
26 Directors of a listed corporation may be elected by classes at a
27 meeting of shareholders at which an amendment to the articles or
28 bylaws described in subdivision (a) is approved, but the extended
29 terms for directors are contingent on that approval, and in the case
30 of an amendment to the articles, the filing of any necessary
31 amendment to the articles pursuant to Section 905 or 910.

32 (c) If directors for more than one class are to be elected by the
33 shareholders at any one meeting of shareholders and the election
34 is by cumulative voting pursuant to Section 708, votes may be
35 cumulated only for directors to be elected within each class.

36 (d) For purposes of this section, a “listed corporation” means a
37 corporation with outstanding shares listed on the New York Stock

1 Exchange, the ~~American Stock Exchange~~, or *NYSE Amex*, the
2 *NASDAQ Global Market*, or *the NASDAQ Capital Market*.

3 (e) Subject to subdivision (h), if a listed corporation having a
4 board of directors divided into classes pursuant to subdivision (a)
5 ceases to be a listed corporation for any reason, unless the articles
6 of incorporation or bylaws of the corporation provide for the
7 elimination of classes of directors at an earlier date or dates, the
8 board of directors of the corporation shall cease to be divided into
9 classes as to each class of directors on the date of the expiration
10 of the term of the directors in that class and the term of each
11 director serving at the time the corporation ceases to be a listed
12 corporation (and the term of each director elected to fill a vacancy
13 resulting from the death, resignation, or removal of any of those
14 directors) shall continue until its expiration as if the corporation
15 had not ceased to be a listed corporation.

16 (f) Subject to subdivision (h), if a listed corporation having a
17 provision in its articles or bylaws eliminating cumulative voting
18 pursuant to subdivision (a) or permitting noncumulative voting in
19 the election of directors pursuant to that subdivision, or both, ceases
20 to be a listed corporation for any reason, the shareholders shall be
21 entitled to cumulate their votes pursuant to Section 708 at any
22 election of directors occurring while the corporation is not a listed
23 corporation notwithstanding that provision in its articles of
24 incorporation or bylaws.

25 (g) Subject to subdivision (i), if a corporation that is not a listed
26 corporation adopts amendments to its articles of incorporation or
27 bylaws to divide its board of directors into classes or to eliminate
28 cumulative voting, or both, pursuant to subdivision (a) and then
29 becomes a listed corporation, unless the articles of incorporation
30 or bylaws provide for those provisions to become effective at some
31 other time and, in cases where classes of directors are provided
32 for, identify the directors who, or the directorships that, are to be
33 in each class or the method by which those directors or
34 directorships are to be identified, the provisions shall become
35 effective for the next election of directors after the corporation
36 becomes a listed corporation at which all directors are to be elected.

37 (h) If a corporation ceases to be a listed corporation on or after
38 the record date for a meeting of shareholders and prior to the
39 conclusion of the meeting, including the conclusion of the meeting
40 after an adjournment or postponement that does not require or

1 result in the setting of a new record date, then, solely for purposes
2 of subdivisions (e) and (f), the corporation shall not be deemed to
3 have ceased to be a listed corporation until the conclusion of the
4 meeting of shareholders.

5 (i) If a corporation becomes a listed corporation on or after the
6 record date for a meeting of shareholders and prior to the
7 conclusion of the meeting, including the conclusion of the meeting
8 after an adjournment or postponement that does not require or
9 result in the setting of a new record date, then, solely for purposes
10 of subdivision (g), the corporation shall not be deemed to have
11 become a listed corporation until the conclusion of the meeting of
12 shareholders.

13 (j) If an article amendment referred to in subdivision (a) is
14 adopted by a listed corporation, the certificate of amendment shall
15 include a statement of the facts showing that the corporation is a
16 listed corporation within the meaning of subdivision (d). If an
17 article or bylaw amendment referred to in subdivision (a) is adopted
18 by a corporation which is not a listed corporation, the provision,
19 as adopted, shall include the following statement or the substantial
20 equivalent: "This provision shall become effective only when the
21 corporation becomes a listed corporation within the meaning of
22 Section 301.5 of the Corporations Code."

23 *SEC. 2. Section 301.7 of the Corporations Code is amended*
24 *to read:*

25 301.7. (a) A listed corporation engaged in business limited to
26 the operation and maintenance of a recreation venture having golf
27 and tennis facilities and ancillary dining and beverage services
28 may, by amendment of its articles or bylaws, adopt provisions
29 allowing division of its board of directors into two classes, with
30 one-half of the directors or as close an approximation as possible
31 to be elected at each annual meeting of shareholders, provided that
32 the corporation's bylaws or articles limit each holder of the
33 securities to no more than five shares and require some of those
34 holders to occupy dwellings immediately contiguous to the real
35 property of the corporation. An article or bylaw amendment
36 providing for division of the board of directors into classes may
37 only be adopted by the approval of the board and the outstanding
38 shares (Section 152) voting as a single class, notwithstanding
39 Section 903. Directors of a listed corporation that meet these
40 conditions may be elected by classes at a meeting of shareholders

1 at which an amendment to the articles or bylaws described in this
2 paragraph is approved, but the extended terms for directors are
3 contingent on that approval, and in the case of an amendment to
4 the articles, the filing of any necessary amendment to the articles
5 pursuant to Section 905 or 910.

6 (b) For purposes of this section, a “listed corporation” means a
7 corporation described in ~~paragraph (1) or (2) of subdivision (d) of~~
8 ~~Section 301.5, except that a corporation described in paragraph~~
9 ~~(2) of subdivision (d) of that section shall be required to only have~~
10 ~~at least 600 holders of its equity securities as of the record date of~~
11 ~~the corporation’s most recent annual meeting of shareholders as~~
12 ~~long as it meets all other requirements of that paragraph.~~

13 (c) If an article amendment referred to in subdivision (a) is
14 adopted by a listed corporation, the certificate of amendment shall
15 include a statement of the facts showing that the corporation is a
16 listed corporation within the meaning of subdivision (b).

17 ~~SEC. 2.~~

18 *SEC. 3.* Section 1300 of the Corporations Code is amended to
19 read:

20 1300. (a) If the approval of the outstanding shares (Section
21 152) of a corporation is required for a reorganization under
22 subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201,
23 each shareholder of the corporation entitled to vote on the
24 transaction and each shareholder of a subsidiary corporation in a
25 short-form merger may, by complying with this chapter, require
26 the corporation in which the shareholder holds shares to purchase
27 for cash at their fair market value the shares owned by the
28 shareholder which are dissenting shares as defined in subdivision
29 (b). The fair market value shall be determined as of the day before
30 the first announcement of the terms of the proposed reorganization
31 or short-form merger, excluding any appreciation or depreciation
32 in consequence of the proposed action, but adjusted for any stock
33 split, reverse stock split, or share dividend which becomes effective
34 thereafter.

35 (b) As used in this chapter, “dissenting shares” means shares
36 which come within all of the following descriptions:

37 (1) Which were not immediately prior to the reorganization or
38 short-form merger listed on any national securities exchange
39 certified by the Commissioner of Corporations under subdivision
40 (o) of Section 25100, and the notice of meeting of shareholders to

1 act upon the reorganization summarizes this section and Sections
2 1301, 1302, 1303 and 1304; provided, however, that this provision
3 does not apply to any shares with respect to which there exists any
4 restriction on transfer imposed by the corporation or by any law
5 or regulation; and provided, further, that this provision does not
6 apply to any class of shares if demands for payment are filed with
7 respect to 5 percent or more of the outstanding shares of that class.

8 (2) Which were outstanding on the date for the determination
9 of shareholders entitled to vote on the reorganization and (A) were
10 not voted in favor of the reorganization or, (B) if described in
11 paragraph (1) (without regard to the provisos in that paragraph),
12 were voted against the reorganization, or were held of record on
13 the effective date of a short-form merger; provided, however, that
14 subparagraph (A) rather than subparagraph (B) of this paragraph
15 applies in any case where the approval required by Section 1201
16 is sought by written consent rather than at a meeting.

17 (3) Which the dissenting shareholder has demanded that the
18 corporation purchase at their fair market value, in accordance with
19 Section 1301.

20 (4) Which the dissenting shareholder has submitted for
21 endorsement, in accordance with Section 1302.

22 (c) As used in this chapter, “dissenting shareholder” means the
23 recordholder of dissenting shares and includes a transferee of
24 record.

25 *SEC. 4. Section 1301 of the Corporations Code is amended to*
26 *read:*

27 1301. (a) If, in the case of a reorganization, any shareholders
28 of a corporation have a right under Section 1300, subject to
29 compliance with paragraphs (3) and (4) of subdivision (b) thereof,
30 to require the corporation to purchase their shares for cash, that
31 corporation shall mail to each such shareholder a notice of the
32 approval of the reorganization by its outstanding shares (Section
33 152) within 10 days after the date of that approval, accompanied
34 by a copy of Sections 1300, 1302, 1303, and 1304 and this section,
35 a statement of the price determined by the corporation to represent
36 the fair market value of the dissenting shares, and a brief
37 description of the procedure to be followed if the shareholder
38 desires to exercise the shareholder’s right under those sections.
39 The statement of price constitutes an offer by the corporation to
40 purchase at the price stated any dissenting shares as defined in

subdivision (b) of Section 1300, unless they lose their status as dissenting shares under Section 1309.

(b) Any shareholder who has a right to require the corporation to purchase the shareholder's shares for cash under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, and who desires the corporation to purchase shares shall make written demand upon the corporation for the purchase of those shares and payment to the shareholder in cash of their fair market value. The demand is not effective for any purpose unless it is received by the corporation or any transfer agent thereof (1) in the case of shares described in ~~clause (A) or (B) of paragraph (4) of~~ subdivision (b) of Section 1300 (without regard to the provisos in that paragraph), not later than the date of the shareholders' meeting to vote upon the reorganization, or (2) in any other case within 30 days after the date on which the notice of the approval by the outstanding shares pursuant to subdivision (a) or the notice pursuant to subdivision (i) of Section 1110 was mailed to the shareholder.

(c) The demand shall state the number and class of the shares held of record by the shareholder which the shareholder demands that the corporation purchase and shall contain a statement of what that shareholder claims to be the fair market value of those shares as of the day before the announcement of the proposed reorganization or short-form merger. The statement of fair market value constitutes an offer by the shareholder to sell the shares at that price.

~~SEC. 3.~~

SEC. 5. Section 1502.1 of the Corporations Code is amended to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the

1 statement by the foregoing independent auditor, by its parent
2 corporation, or by a subsidiary or corporate affiliate of the
3 independent auditor or its parent corporation.

4 (3) The name of the independent auditor employed by the
5 corporation on the date of the statement, if different from the
6 independent auditor listed pursuant to paragraph (1).

7 (4) The compensation for the most recent fiscal year of the
8 corporation paid to each member of the board of directors and paid
9 to each of the five most highly compensated executive officers of
10 the corporation who are not members of the board of directors,
11 including the number of any shares issued, options for shares
12 granted, and similar equity-based compensation granted to each
13 of those persons. If the chief executive officer is not among the
14 five most highly compensated executive officers of the corporation,
15 the compensation paid to the chief executive officer shall also be
16 included.

17 (5) A description of any loan, including the amount and terms
18 of the loan, made to any member of the board of directors by the
19 corporation during the corporation's two most recent fiscal years
20 at an interest rate lower than the interest rate available from
21 unaffiliated commercial lenders generally to a similarly-situated
22 borrower.

23 (6) A statement indicating whether an order for relief has been
24 entered in a bankruptcy case with respect to the corporation, its
25 executive officers, or members of the board of directors of the
26 corporation during the 10 years preceding the date of the statement.

27 (7) A statement indicating whether any member of the board of
28 directors or executive officer of the corporation was convicted of
29 fraud during the 10 years preceding the date of the statement, if
30 the conviction has not been overturned or expunged.

31 (8) A description of any material pending legal proceedings,
32 other than ordinary routine litigation incidental to the business, to
33 which the corporation or any of its subsidiaries is a party or of
34 which any of their property is the subject, as specified by Item 103
35 of Regulation S-K of the Securities Exchange Commission (Section
36 229.103 of Title 12 of the Code of Federal Regulations). A
37 description of any material legal proceeding during which the
38 corporation was found legally liable by entry of a final judgment
39 or final order that was not overturned on appeal during the five
40 years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded corporation” means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by Pink-Sheets-LLC-*OTC Markets Inc.*

(2) “Executive officer” means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) “Compensation” as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) “Loan” as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation’s payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

~~SEC. 4.~~

SEC. 6. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to the requirements of subdivision (b)

1 commencing on the date specified in subdivision (d) and continuing
2 until the date specified in subdivision (e) if:

3 (1) The average of the property factor, the payroll factor, and
4 the sales factor (as defined in Sections 25129, 25132, and 25134
5 of the Revenue and Taxation Code) with respect to it is more than
6 50 percent during its latest full income year and

7 (2) more than one-half of its outstanding voting securities are
8 held of record by persons having addresses in this state appearing
9 on the books of the corporation on the record date for the latest
10 meeting of shareholders held during its latest full income year or,
11 if no meeting was held during that year, on the last day of the latest
12 full income year. The property factor, payroll factor, and sales
13 factor shall be those used in computing the portion of its income
14 allocable to this state in its franchise tax return or, with respect to
15 corporations the allocation of whose income is governed by special
16 formulas or that are not required to file separate or any tax returns,
17 which would have been so used if they were governed by this
18 three-factor formula. The determination of these factors with
19 respect to any parent corporation shall be made on a consolidated
20 basis, including in a unitary computation (after elimination of
21 intercompany transactions) the property, payroll, and sales of the
22 parent and all of its subsidiaries in which it owns directly or
23 indirectly more than 50 percent of the outstanding shares entitled
24 to vote for the election of directors, but deducting a percentage of
25 the property, payroll, and sales of any subsidiary equal to the
26 percentage minority ownership, if any, in the subsidiary. For the
27 purpose of this subdivision, any securities held to the knowledge
28 of the issuer in the names of broker-dealers, nominees for
29 broker-dealers (including clearing corporations), or banks,
30 associations, or other entities holding securities in a nominee name
31 or otherwise on behalf of a beneficial owner (collectively “nominee
32 holders”), shall not be considered outstanding. However, if the
33 foreign corporation requests all nominee holders to certify, with
34 respect to all beneficial owners for whom securities are held, the
35 number of shares held for those beneficial owners having addresses
36 (as shown on the records of the nominee holder) in this state and
37 outside of this state, then all shares so certified shall be considered
38 outstanding and held of record by persons having addresses either
39 in this state or outside of this state as so certified, provided that
40 the certification so provided shall be retained with the record of

1 shareholders and made available for inspection and copying in the
2 same manner as is provided in Section 1600 with respect to that
3 record. A current list of beneficial owners of a foreign corporation's
4 securities provided to the corporation by one or more nominee
5 holders or their agent pursuant to the requirements of Rule
6 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992,
7 promulgated under the Securities Exchange Act of 1934, shall
8 constitute an acceptable certification with respect to beneficial
9 owners for the purposes of this subdivision.

10 (b) Except as provided in subdivision (c), the following chapters
11 and sections of this division shall apply to a foreign corporation
12 as defined in subdivision (a) (to the exclusion of the law of the
13 jurisdiction in which it is incorporated):

14 Chapter 1 (general provisions and definitions), to the extent
15 applicable to the following provisions;

16 Section 301 (annual election of directors);

17 Section 303 (removal of directors without cause);

18 Section 304 (removal of directors by court proceedings);

19 Section 305, subdivision (c) (filling of director vacancies where
20 less than a majority in office elected by shareholders);

21 Section 309 (directors' standard of care);

22 Section 316 (excluding paragraph (3) of subdivision (a) and
23 paragraph (3) of subdivision (f)) (liability of directors for unlawful
24 distributions);

25 Section 317 (indemnification of directors, officers, and others);

26 Sections 500 to 505, inclusive (limitations on corporate
27 distributions in cash or property);

28 Section 506 (liability of shareholder who receives unlawful
29 distribution);

30 Section 600, subdivisions (b) and (c) (requirement for annual
31 shareholders' meeting and remedy if same not timely held);

32 Section 708, subdivisions (a), (b), and (c) (shareholder's right
33 to cumulate votes at any election of directors);

34 Section 710 (supermajority vote requirement);

35 Section 1001, subdivision (d) (limitations on sale of assets);

36 Section 1101 (provisions following subdivision (e)) (limitations
37 on mergers);

38 Section 1151 (first sentence only) (limitations on conversions);

39 Section 1152 (requirements of conversions);

40 Chapter 12 (commencing with Section 1200) (reorganizations);

1 Chapter 13 (commencing with Section 1300) (dissenters' rights);
2 Sections 1500 and 1501 (records and reports);
3 Section 1508 (action by Attorney General);
4 Chapter 16 (commencing with Section 1600) (rights of
5 inspection).

6 (c) This section does not apply to any corporation (1) with
7 outstanding securities listed on the New York Stock Exchange,
8 ~~the American Stock Exchange, or NYSE Amex,~~ the NASDAQ
9 Global Market, *or the NASDAQ Capital Market*, or (2) if all of its
10 voting shares (other than directors' qualifying shares) are owned
11 directly or indirectly by a corporation or corporations not subject
12 to this section.

13 (d) For purposes of subdivision (a), the requirements of
14 subdivision (b) shall become applicable to a foreign corporation
15 only upon the first day of the first income year of the corporation
16 (1) commencing on or after the 135th day of the income year
17 immediately following the latest income year with respect to which
18 the tests referred to in subdivision (a) have been met or (2)
19 commencing on or after the entry of a final order by a court of
20 competent jurisdiction declaring that those tests have been met.

21 (e) For purposes of subdivision (a), the requirements of
22 subdivision (b) shall cease to be applicable to a foreign corporation
23 (1) at the end of the first income year of the corporation
24 immediately following the latest income year with respect to which
25 at least one of the tests referred to in subdivision (a) is not met or
26 (2) at the end of the income year of the corporation during which
27 a final order has been entered by a court of competent jurisdiction
28 declaring that one of those tests is not met, provided that a contrary
29 order has not been entered before the end of the income year.

30 (f) Any foreign corporation that is subject to the requirements
31 of subdivision (b) shall advise any shareholder of record, any
32 officer, director, employee, or other agent (within the meaning of
33 Section 317) and any creditor of the corporation in writing, within
34 30 days of receipt of written request for that information, whether
35 or not it is subject to subdivision (b) at the time the request is
36 received. Any party who obtains a final determination by a court
37 of competent jurisdiction that the corporation failed to provide to
38 the party information required to be provided by this subdivision
39 or provided the party information of the kind required to be
40 provided by this subdivision that was incorrect, then the court, in

1 its discretion, shall have the power to include in its judgment
2 recovery by the party from the corporation of all court costs and
3 reasonable attorneys' fees incurred in that legal proceeding to the
4 extent they relate to obtaining that final determination.

5 ~~SEC. 5.~~

6 *SEC. 7.* Section 2117.1 of the Corporations Code is amended
7 to read:

8 2117.1. (a) In addition to the statement required pursuant to
9 Section 2117, every publicly traded foreign corporation shall file
10 annually, within 150 days after the end of its fiscal year, on a form
11 prescribed by the Secretary of State, a statement that includes all
12 of the following information:

13 (1) The name of the independent auditor that prepared the most
14 recent auditor's report on the publicly traded foreign corporation's
15 annual financial statements.

16 (2) A description of other services, if any, performed for the
17 publicly traded foreign corporation during its two most recent
18 fiscal years and the period between the end of its most recent fiscal
19 year and the date of the statement by the foregoing independent
20 auditor, by its parent corporation, or by a subsidiary or corporate
21 affiliate of the independent auditor or its parent corporation.

22 (3) The name of the independent auditor employed by the
23 foreign corporation on the date of the statement, if different from
24 the independent auditor listed pursuant to paragraph (1).

25 (4) The compensation for the most recent fiscal year of the
26 publicly traded foreign corporation paid to each member of the
27 board of directors and paid to each of the five most highly
28 compensated executive officers of the foreign corporation who are
29 not members of the board of directors, including the number of
30 any shares issued, options for shares granted, and similar
31 equity-based compensation granted to each of those persons. If
32 the chief executive officer is not among the five most highly
33 compensated executive officers of the corporation, the
34 compensation paid to the chief executive officer shall also be
35 included.

36 (5) A description of any loan, including the amount and terms
37 of the loans, made to any member of the board of directors by the
38 publicly traded foreign corporation during the foreign corporation's
39 two most recent fiscal years at an interest rate lower than the

1 interest rate available from unaffiliated commercial lenders
2 generally to a similarly situated borrower.

3 (6) A statement indicating whether an order for relief has been
4 entered in a bankruptcy case with respect to the foreign corporation,
5 its executive officers, or members of the board of directors of the
6 foreign corporation during the 10 years preceding the date of the
7 statement.

8 (7) A statement indicating whether any member of the board of
9 directors or executive officer of the publicly traded foreign
10 corporation was convicted of fraud during the 10 years preceding
11 the date of the statement, which conviction has not been overturned
12 or expunged.

13 (8) A description of any material pending legal proceedings,
14 other than ordinary routine litigation incidental to the business, to
15 which the corporation or any of its subsidiaries is a party or of
16 which any of their property is the subject, as specified by Item 103
17 of Regulation S-K of the Securities Exchange Commission (Section
18 229.103 of Title 12 of the Code of Federal Regulations). A
19 description of any material legal proceeding during which the
20 corporation was found legally liable by entry of a final judgment
21 or final order that was not overturned on appeal during the five
22 years preceding the date of the statement.

23 (b) For purposes of this section, the following definitions apply:

24 (1) “Publicly traded foreign corporation” means a foreign
25 corporation, as defined in Section 171, that is an issuer as defined
26 in Section 3 of the Securities Exchange Act of 1934, as amended
27 (15 U.S.C. Sec. 78c), and has at least one class of securities listed
28 or admitted for trading on a national securities exchange, on the
29 OTC Bulletin Board, or on the electronic service operated by Pink
30 ~~Sheets LLC~~; *OTC Markets Inc.*

31 (2) “Executive officer” means the chief executive officer,
32 president, any vice president in charge of a principal business unit,
33 division, or function, any other officer of the corporation who
34 performs a policymaking function, or any other person who
35 performs similar policymaking functions for the corporation.

36 (3) “Compensation” as used in paragraph (4) of subdivision (a)
37 means all plan and nonplan compensation awarded to, earned by,
38 or paid to the person for all services rendered in all capacities to
39 the corporation and to its subsidiaries, as the compensation is
40 specified by Item 402 of Regulation S-K of the Securities and

1 Exchange Commission (Section 229.402 of Title 17 of the Code
2 of Federal Regulations).

3 (4) “Loan” as used in paragraph (5) of subdivision (a) excludes
4 an advance for expenses, the foreign corporation’s payment of life
5 insurance premiums, and an advance of litigation expenses, in each
6 instance as permitted according to the applicable law of the state
7 or place of incorporation or organization of the foreign corporation.

8 (c) This statement shall be available and open to the public for
9 inspection. The Secretary of State shall provide access to all
10 information contained in this statement by means of an online
11 database.

12 (d) A foreign corporation shall certify that the information it
13 provides pursuant to this section is true and correct. No claim may
14 be made against the state for inaccurate information contained in
15 statements filed under this section with the Secretary of State.

16 ~~SEC. 6.~~

17 *SEC. 8.* Section 25014.7 of the Corporations Code is amended
18 to read:

19 25014.7. (a) “Eligible rollup transaction” means a rollup
20 transaction in which the new securities issued are listed or approved
21 for listing on a national securities exchange which has been
22 certified by the commissioner under subdivision (o) of Section
23 25100, if the exchange requires as a condition to listing or
24 designation that the rollup transaction be conducted in accordance
25 with procedures to protect the rights of limited partners.

26 (b) The rights of limited partners will be presumed to be
27 protected if the rollup transaction provides for the right of
28 dissenting limited partners:

29 (1) To receive compensation for their limited partnership units
30 based on an appraisal of the limited partnership assets performed
31 by an independent appraiser unaffiliated with the sponsor or general
32 partner of the limited partnership and which value the assets as if
33 sold in an orderly manner in a reasonable period of time, plus or
34 minus other balance sheet items, and less the cost of sale or
35 refinancing. Compensation to dissenting limited partners of rollup
36 transactions may be cash, secured debt instruments, unsecured
37 debt instruments, or freely tradeable securities; provided, however,
38 that:

39 (A) Rollups which utilize debt instruments as compensation
40 provide for a trustee and an indenture to protect the rights of the

1 debt holders and provide a rate of interest based upon, but not less
2 than, the then applicable federal rate as determined in accordance
3 with Section 1274 of the Internal Revenue Code of 1986.

4 (B) Rollups which utilize unsecured debt instruments as
5 compensation, in addition to the requirements of subparagraph
6 (A), limit total leverage to 70 percent of the appraised value of the
7 assets.

8 (C) All debt securities have a term no greater than seven years
9 and provide for prepayment with 80 percent of the net proceeds
10 of any sale or refinancing of the assets previously owned by the
11 entity or any part thereof.

12 (D) Freely tradeable securities utilized as compensation to
13 dissenting limited partners must be issued by an issuer whose
14 securities are listed on a national securities exchange that has been
15 certified for at least one year prior to the transaction, and the
16 number of securities to be received in return for limited partnership
17 interests must be determined by an appraisal of limited partnership
18 assets, conducted in a manner consistent with this paragraph, in
19 relation to the average last sale price of the freely tradeable
20 securities in the 20-day period following the transaction. If the
21 issuer of the freely tradeable securities is affiliated with the sponsor
22 or general partner, newly issued securities to be utilized as
23 compensation to dissenting limited partners shall not represent
24 more than 20 percent of the issued and outstanding shares of that
25 class of securities after giving effect to the issuance. For the
26 purposes of the preceding sentence, a sponsor or general partner
27 is “affiliated” with the issuer of the freely tradeable securities if
28 the sponsor or general partner receives any material compensation
29 from the issuer or its affiliates in conjunction with the rollup
30 transaction or the purchase of the general partner’s interest;
31 provided, however, that nothing herein shall restrict the ability of
32 a sponsor or general partner to receive any payment for its equity
33 interests and compensation as otherwise provided by this section.

34 (2) To receive or retain a security with substantially the same
35 terms and conditions as the security originally held, provided that
36 the receipt or retention of that security is not a step in a series of
37 subsequent transactions that directly or indirectly through
38 acquisition or otherwise involves future combinations or
39 reorganizations of one or more rollup participants. Securities

1 received or retained will be considered to have the same terms and
2 conditions as the security originally held if:

3 (A) There is no material adverse change to dissenting limited
4 partners' rights, including, but not limited to, rights with respect
5 to voting, the business plan, or the investment, distribution,
6 management compensation and liquidation policies of the limited
7 partnership or resulting entity.

8 (B) The dissenting limited partners receive the same preferences,
9 privileges, and priorities as they had pursuant to the security
10 originally held.

11 The rights set forth in paragraphs (1) and (2) are the only rights
12 of dissenting limited partners to which the presumption under this
13 subdivision applies. A general partner or sponsor shall file an
14 application for qualification pursuant to Section 25110 or Section
15 25120 with respect to any other rights proposed to be offered to
16 dissenting limited partners.

17 At the time a registration statement is filed with the Securities
18 and Exchange Commission with respect to an eligible rollup
19 transaction, a general partner or sponsor shall notify, to the
20 maximum extent permitted by the federal securities laws, each
21 limited partner who has an address in this state by certified mail
22 of the following: That a registration statement has been filed with
23 the Securities and Exchange Commission with respect to a rollup
24 transaction; that the general partner or sponsor claims an exemption
25 from the review process under the law by virtue of Section 25014.7,
26 which defines "eligible rollup transaction"; that the general partner
27 or sponsor has the burden of proof under the law that the
28 transaction meets the definition of eligible rollup transaction; and
29 that the commissioner does not recommend or endorse the
30 transaction.

31 (c) The rights of limited partners shall be presumed not to be
32 protected if the general partner:

33 (1) Converts an equity interest in the limited partnerships subject
34 to a rollup for which consideration was not paid and which was
35 not otherwise provided for in the limited partnership agreement
36 and disclosed to limited partners, into a voting interest in the new
37 entity, provided, however, an interest originally obtained in order
38 to comply with the provisions of Internal Revenue Service Revenue
39 Proclamation 89-12 may be converted.

1 (2) Fails to follow the valuation provisions in the limited
2 partnership agreements of the subject limited partners when valuing
3 their limited partnership interests.

4 (3) Utilizes a future value of their equity interest rather than the
5 current value of their equity interest, as determined by an appraisal
6 conducted in a manner consistent with paragraph (1) of subdivision
7 (b), when determining their interest in the new entity.

8 (d) The rights of limited partners shall be presumed not to be
9 protected as to voting rights, if:

10 (1) The voting rights in the entity resulting from a rollup do not
11 generally follow the original voting rights of the limited
12 partnerships participating in the rollup transaction.

13 (2) A majority of the interest in an entity resulting from a rollup
14 transaction may not, without concurrence by the sponsor, general
15 partners, board of directors or trustee, depending on the form of
16 entity, vote to:

17 (A) Amend the limited partnership agreement, articles of
18 incorporation or bylaws, or indenture.

19 (B) Dissolve the entity.

20 (C) Remove management and elect new management.

21 (D) Approve or disapprove the sale of substantially all of the
22 assets of the entity.

23 (3) The general partner or sponsor proposing a rollup is not
24 required to provide each person whose equity interest is subject
25 to the rollup transaction with a document which instructs the person
26 on the proper procedure for voting against or dissenting from the
27 rollup transaction.

28 (4) The general partner or sponsor does not utilize an
29 independent third party to receive and tabulate all votes and
30 dissents, and require that the third party make the tabulation
31 available to the general partner and any limited partner upon
32 request at any time during and after voting occurs.

33 (e) The rights of limited partners shall be presumed not to be
34 protected as to transaction costs if:

35 (1) Limited partners bear an unfair portion of the transaction
36 costs of a proposed rollup transaction that is rejected. For purposes
37 of this provision, transaction costs are defined as the costs of
38 printing and mailing the proxy, prospectus, or other documents;
39 legal fees not related to the solicitation of votes or tenders; financial
40 advisory fees; investment banking fees; appraisal fees; accounting

1 fees; independent committee expenses; travel expenses; and all
2 other fees related to the preparatory work of the transaction, but
3 not including costs that would have otherwise been incurred by
4 the subject limited partnerships in the ordinary course of business,
5 or solicitation expenses.

6 (2) Transaction costs of a rejected rollup transaction are not
7 apportioned between general and limited partners of the subject
8 limited partnerships according to the final vote on the proposed
9 transaction as follows:

10 (A) The general partner or sponsor bears all rollup transaction
11 costs in proportion to the number of votes to reject the rollup
12 transaction.

13 (B) Limited partners bear transaction costs in proportion to the
14 number of votes to approve the rollup transaction.

15 (3) The dissenting limited partnership is required to pay any of
16 the costs of the rollup transaction and the general partner or sponsor
17 is not required to pay the rollup transaction costs on behalf of the
18 dissenting limited partnerships in a rollup in which one or more
19 limited partnerships determines not to approve the transaction, but
20 where the rollup transaction is consummated with respect to one
21 or more approving limited partnerships.

22 (f) The rights of limited partners shall be presumed not to be
23 protected as to fees of general partners and sponsors, if:

24 (1) General partners and sponsors are not prevented from
25 receiving both unearned management fees discounted to a present
26 value, if those fees were not previously provided for in the limited
27 partnership agreement and disclosed to limited partners, and new
28 asset-based fees.

29 (2) Property management fees and other management fees are
30 not appropriate, not reasonable and greater than what would be
31 paid to third parties for performing similar services.

32 (3) Changes in fees which are substantial and adverse to limited
33 partners are not approved by an independent committee according
34 to the facts and circumstances of each transaction.

35 (g) A general partner or sponsor proposing a rollup transaction
36 shall pay all solicitation expenses related to the transaction,
37 including all preparatory work related thereto, in the event the
38 rollup transaction is not approved. For purposes of this section,
39 "solicitation expenses" include direct marketing expenses such as
40 telephone calls, broker-dealer fact sheets, legal and other fees

1 related to the solicitation, as well as direct solicitation
2 compensation to brokers and dealers.

3 (h) A broker or dealer may not receive compensation for
4 soliciting votes or tenders from limited partners in connection with
5 a rollup transaction unless that compensation:

6 (1) Is payable and equal in amount regardless of whether the
7 limited partner votes affirmatively or negatively in the proposed
8 rollup.

9 (2) In the aggregate, does not exceed 2 percent of the exchange
10 value of the newly created securities.

11 (3) Is paid regardless of whether the limited partners reject the
12 proposed rollup transaction.

13 (i) As used in this section, the following terms have the
14 following meanings:

15 (1) “Limited partnership” includes any entity determined to be
16 a “partnership” pursuant to Section 14(h)(4)(B) of the Securities
17 Exchange Act of 1934 or such other entity having a substantially
18 economically equivalent form of ownership instrument.

19 (2) “Dissenting limited partner” means a holder or a beneficial
20 interest in a limited partnership that is the subject of a rollup
21 transaction who casts a vote against the rollup transaction, except
22 that for purposes of an exchange or tender offer dissenting limited
23 partner means any person who files a dissent from the terms of the
24 transaction with the party responsible for tabulating the votes or
25 tenders, to be received in connection with the transaction during
26 the period in which the offer is outstanding.

27 (3) “Management fee” means a fee paid to the sponsor, general
28 partner, their affiliates, or other persons for management and
29 administration of the limited partnership.

30 ~~SEC. 7.~~

31 *SEC. 9.* Section 25100 of the Corporations Code is amended
32 to read:

33 25100. The following securities are exempted from Sections
34 25110, 25120, and 25130:

35 (a) Any security (including a revenue obligation) issued or
36 guaranteed by the United States, any state, any city, county, city
37 and county, public district, public authority, public corporation,
38 public entity, or political subdivision of a state or any agency or
39 corporate or other instrumentality of any one or more of the
40 foregoing; or any certificate of deposit for any of the foregoing.

1 (b) Any security issued or guaranteed by Canada, any Canadian
2 province, any political subdivision or municipality of that province,
3 or by any other foreign government with which the United States
4 currently maintains diplomatic relations, if the security is
5 recognized as a valid obligation by the issuer or guarantor; or any
6 certificate of deposit for any of the foregoing.

7 (c) Any security issued or guaranteed by and representing an
8 interest in or a direct obligation of a national bank or a bank or
9 trust company incorporated under the laws of this state, and any
10 security issued by a bank to one or more other banks and
11 representing an interest in an asset of the issuing bank.

12 (d) Any security issued or guaranteed by a federal savings
13 association or federal savings bank or federal land bank or joint
14 land bank or national farm loan association or by any savings
15 association, as defined in subdivision (a) of Section 5102 of the
16 Financial Code, which is subject to the supervision and regulation
17 of the Commissioner of Financial Institutions of this state.

18 (e) Any security (other than an interest in all or portions of a
19 parcel or parcels of real property which are subdivided land or a
20 subdivision or in a real estate development), the issuance of which
21 is subject to authorization by the Insurance Commissioner, the
22 Public Utilities Commission, or the Real Estate Commissioner of
23 this state.

24 (f) Any security consisting of any interest in all or portions of
25 a parcel or parcels of real property which are subdivided lands or
26 a subdivision or in a real estate development; provided that the
27 exemption in this subdivision shall not be applicable to: (1) any
28 investment contract sold or offered for sale with, or as part of, that
29 interest, or (2) any person engaged in the business of selling,
30 distributing, or supplying water for irrigation purposes or domestic
31 use that is not a public utility except that the exemption is
32 applicable to any security of a mutual water company (other than
33 an investment contract as described in paragraph (1)) offered or
34 sold in connection with subdivided lands pursuant to Chapter 2
35 (commencing with Section 14310) of Part 7 of Division 3 of Title
36 1.

37 (g) Any mutual capital certificates or savings accounts, as
38 defined in the Savings Association Law, issued by a savings
39 association, as defined by subdivision (a) of Section 5102 of the
40 Financial Code, and holding a license or certificate of authority

1 then in force from the Commissioner of Financial Institutions of
2 this state.

3 (h) Any security issued or guaranteed by any federal credit
4 union, or by any credit union organized and supervised, or
5 regulated, under the Credit Union Law.

6 (i) Any security issued or guaranteed by any railroad, other
7 common carrier, public utility, or public utility holding company
8 which is (1) subject to the jurisdiction of the Interstate Commerce
9 Commission or its successor or (2) a holding company registered
10 with the Securities and Exchange Commission under the Public
11 Utility Holding Company Act of 1935 or a subsidiary of that
12 company within the meaning of that act or (3) regulated in respect
13 of the issuance or guarantee of the security by a governmental
14 authority of the United States, of any state, of Canada or of any
15 Canadian province; and the security is subject to registration with
16 or authorization of issuance by that authority.

17 (j) Any security (except evidences of indebtedness, whether
18 interest bearing or not) of an issuer (1) organized exclusively for
19 educational, benevolent, fraternal, religious, charitable, social, or
20 reformatory purposes and not for pecuniary profit, if no part of the
21 net earnings of the issuer inures to the benefit of any private
22 shareholder or individual, or (2) organized as a chamber of
23 commerce or trade or professional association. The fact that
24 amounts received from memberships or dues or both will or may
25 be used to construct or otherwise acquire facilities for use by
26 members of the nonprofit organization does not disqualify the
27 organization for this exemption. This exemption does not apply
28 to the securities of any nonprofit organization if any promoter
29 thereof expects or intends to make a profit directly or indirectly
30 from any business or activity associated with the organization or
31 operation of that nonprofit organization or from remuneration
32 received from that nonprofit organization.

33 (k) Any agreement, commonly known as a “life income
34 contract,” of an issuer (1) organized exclusively for educational,
35 benevolent, fraternal, religious, charitable, social, or reformatory
36 purposes and not for pecuniary profit and (2) which the
37 commissioner designates by rule or order, with a donor in
38 consideration of a donation of property to that issuer and providing
39 for the payment to the donor or persons designated by him or her
40 of income or specified periodic payments from the donated

1 property or other property for the life of the donor or those other
2 persons.

3 (l) Any note, draft, bill of exchange, or banker's acceptance
4 which is freely transferable and of prime quality, arises out of a
5 current transaction or the proceeds of which have been or are to
6 be used for current transactions, and which evidences an obligation
7 to pay cash within nine months of the date of issuance, exclusive
8 of days of grace, or any renewal of that paper which is likewise
9 limited, or any guarantee of that paper or of that renewal, provided
10 that the paper is not offered to the public in amounts of less than
11 twenty-five thousand dollars (\$25,000) in the aggregate to any one
12 purchaser. In addition, the commissioner may, by rule or order,
13 exempt any issuer of any notes, drafts, bills of exchange or banker's
14 acceptances from qualification of those securities when the
15 commissioner finds that the qualification is not necessary or
16 appropriate in the public interest or for the protection of investors.

17 (m) Any security issued by any corporation organized and
18 existing under the provisions of Chapter 1 (commencing with
19 Section 54001) of Division 20 of the Food and Agricultural Code.

20 (n) Any beneficial interest in an employees' pension,
21 profit-sharing, stock bonus or similar benefit plan which meets the
22 requirements for qualification under Section 401 of the federal
23 Internal Revenue Code or any statute amendatory thereof or
24 supplementary thereto. A determination letter from the Internal
25 Revenue Service stating that an employees' pension, profit-sharing,
26 stock bonus or similar benefit plan meets those requirements shall
27 be conclusive evidence that the plan is an employees' pension,
28 profit-sharing, stock bonus or similar benefit plan within the
29 meaning of the first sentence of this subdivision until the date the
30 determination letter is revoked in writing by the Internal Revenue
31 Service, regardless of whether or not the revocation is retroactive.

32 (o) Any security listed or approved for listing upon notice of
33 issuance on a national securities exchange, if the exchange has
34 been certified by rule or order of the commissioner and any warrant
35 or right to purchase or subscribe to the security. The exemption
36 afforded by this subdivision does not apply to securities listed or
37 approved for listing upon notice of issuance on a national securities
38 exchange, in a rollup transaction unless the rollup transaction is
39 an eligible rollup transaction as defined in Section 25014.7.

1 That certification of any exchange shall be made by the
2 commissioner upon the written request of the exchange if the
3 commissioner finds that the exchange, in acting on applications
4 for listing of common stock, substantially applies the minimum
5 standards set forth in either subparagraph (A) or (B) of paragraph
6 (1), and, in considering suspension or removal from listing,
7 substantially applies each of the criteria set forth in paragraph (2).

8 (1) Listing standards:

9 (A) (i) Shareholders' equity of at least four million dollars
10 (\$4,000,000).

11 (ii) Pretax income of at least seven hundred fifty thousand
12 dollars (\$750,000) in the issuer's last fiscal year or in two of its
13 last three fiscal years.

14 (iii) Minimum public distribution of 500,000 shares (exclusive
15 of the holdings of officers, directors, controlling shareholders, and
16 other concentrated or family holdings), together with a minimum
17 of 800 public holders or minimum public distribution of 1,000,000
18 shares together with a minimum of 400 public holders. The
19 exchange may also consider the listing of a company's securities
20 if the company has a minimum of 500,000 shares publicly held, a
21 minimum of 400 shareholders and daily trading volume in the
22 issue has been approximately 2,000 shares or more for the six
23 months preceding the date of application. In evaluating the
24 suitability of an issue for listing under this trading provision, the
25 exchange shall review the nature and frequency of that activity
26 and any other factors as it may determine to be relevant in
27 ascertaining whether the issue is suitable for trading. A security
28 that trades infrequently shall not be considered for listing under
29 this paragraph even though average daily volume amounts to 2,000
30 shares per day or more.

31 Companies whose securities are concentrated in a limited
32 geographical area, or whose securities are largely held in block by
33 institutional investors, normally may not be considered eligible
34 for listing unless the public distribution appreciably exceeds
35 500,000 shares.

36 (iv) Minimum price of three dollars (\$3) per share for a
37 reasonable period of time prior to the filing of a listing application;
38 provided, however, in certain instances an exchange may favorably
39 consider listing an issue selling for less than three dollars (\$3) per
40 share after considering all pertinent factors, including market

1 conditions in general, whether historically the issue has sold above
2 three dollars (\$3) per share, the applicant's capitalization, and the
3 number of outstanding and publicly held shares of the issue.

4 (v) An aggregate market value for publicly held shares of at
5 least three million dollars (\$3,000,000).

6 (B) (i) Shareholders' equity of at least four million dollars
7 (\$4,000,000).

8 (ii) Minimum public distribution set forth in clause (iii) of
9 subparagraph (A) of paragraph (1).

10 (iii) Operating history of at least three years.

11 (iv) An aggregate market value for publicly held shares of at
12 least fifteen million dollars (\$15,000,000).

13 (2) Criteria for consideration of suspension or removal from
14 listing:

15 (i) If a company that (A) has shareholders' equity of less than
16 one million dollars (\$1,000,000) has sustained net losses in each
17 of its two most recent fiscal years, or (B) has net tangible assets
18 of less than three million dollars (\$3,000,000) and has sustained
19 net losses in three of its four most recent fiscal years.

20 (ii) If the number of shares publicly held (excluding the holdings
21 of officers, directors, controlling shareholders and other
22 concentrated or family holdings) is less than 150,000.

23 (iii) If the total number of shareholders is less than 400 or if the
24 number of shareholders of lots of 100 shares or more is less than
25 300.

26 (iv) If the aggregate market value of shares publicly held is less
27 than seven hundred fifty thousand dollars (\$750,000).

28 (v) If shares of common stock sell at a price of less than three
29 dollars (\$3) per share for a substantial period of time and the issuer
30 shall fail to effectuate a reverse stock split of the shares within a
31 reasonable period of time after being requested by the exchange
32 to take that action.

33 A national securities exchange, certified by rule or order of the
34 commissioner under this subdivision, shall file annual reports when
35 requested to do so by the commissioner. The annual reports shall
36 contain, by issuer: the variances granted to an exchange's listing
37 standards, including variances from corporate governance and
38 voting rights' standards, for any security of that issuer; the reasons
39 for the variances; a discussion of the review procedure instituted
40 by the exchange to determine the effect of the variances on

1 investors and whether the variances should be continued; and any
2 other information that the commissioner deems relevant. The
3 purpose of these reports is to assist the commissioner in
4 determining whether the quantitative and qualitative requirements
5 of this subdivision are substantially being met by the exchange in
6 general or with regard to any particular security.

7 The commissioner after appropriate notice and opportunity for
8 hearing in accordance with the provisions of the Administrative
9 Procedure Act, Chapter 5 (commencing with Section 11500) of
10 Part 1 of Division 3 of Title 2 of the Government Code, may, in
11 his or her discretion, by rule or order, decertify any exchange
12 previously certified that ceases substantially to apply the minimum
13 standards or criteria as set forth in paragraphs (1) and (2).

14 A rule or order of certification shall conclusively establish that
15 any security listed or approved for listing upon notice of issuance
16 on any exchange named in a rule or order of certification, and any
17 warrant or right to purchase or subscribe to that security, is exempt
18 under this subdivision until the adoption by the commissioner of
19 any rule or order decertifying the exchange.

20 (p) A promissory note secured by a lien on real property, which
21 is neither one of a series of notes of equal priority secured by
22 interests in the same real property nor a note in which beneficial
23 interests are sold to more than one person or entity.

24 (q) Any unincorporated interindemnity or reciprocal or
25 interinsurance contract, that qualifies under the provisions of
26 Section 1280.7 of the Insurance Code, between members of a
27 cooperative corporation, organized and operating under Part 2
28 (commencing with Section 12200) of Division 3 of Title 1, and
29 whose members consist only of physicians and surgeons licensed
30 in California, which contracts indemnify solely in respect to
31 medical malpractice claims against the members, and which do
32 not collect in advance of loss any moneys other than contributions
33 by each member to a collective reserve trust fund or for necessary
34 expenses of administration.

35 (1) Whenever it appears to the commissioner that any person
36 has engaged or is about to engage in any act or practice constituting
37 a violation of any provision of Section 1280.7 of the Insurance
38 Code, the commissioner may, in the commissioner's discretion,
39 bring an action in the name of the people of the State of California
40 in the superior court to enjoin the acts or practices or to enforce

1 compliance with Section 1280.7 of the Insurance Code. Upon a
2 proper showing a permanent or preliminary injunction, a restraining
3 order, or a writ of mandate shall be granted and a receiver or
4 conservator may be appointed for the defendant or the defendant's
5 assets.

6 (2) The commissioner may, in the commissioner's discretion,
7 (A) make public or private investigations within or outside of this
8 state as the commissioner deems necessary to determine whether
9 any person has violated or is about to violate any provision of
10 Section 1280.7 of the Insurance Code or to aid in the enforcement
11 of Section 1280.7, and (B) publish information concerning the
12 violation of Section 1280.7.

13 (3) For the purpose of any investigation or proceeding under
14 this section, the commissioner or any officer designated by the
15 commissioner may administer oaths and affirmations, subpoena
16 witnesses, compel their attendance, take evidence, and require the
17 production of any books, papers, correspondence, memoranda,
18 agreements, or other documents or records which the commissioner
19 deems relevant or material to the inquiry.

20 (4) In case of contumacy by, or refusal to obey a subpoena
21 issued to, any person, the superior court, upon application by the
22 commissioner, may issue to the person an order requiring the
23 person to appear before the commissioner, or the officer designated
24 by the commissioner, to produce documentary evidence, if so
25 ordered, or to give evidence touching the matter under investigation
26 or in question. Failure to obey the order of the court may be
27 punished by the court as a contempt.

28 (5) No person is excused from attending or testifying or from
29 producing any document or record before the commissioner or in
30 obedience to the subpoena of the commissioner or any officer
31 designated by the commissioner, or in any proceeding instituted
32 by the commissioner, on the ground that the testimony or evidence
33 (documentary or otherwise), required of the person may tend to
34 incriminate the person or subject the person to a penalty or
35 forfeiture, but no individual may be prosecuted or subjected to any
36 penalty or forfeiture for or on account of any transaction, matter,
37 or thing concerning which the person is compelled, after validly
38 claiming the privilege against self-incrimination, to testify or
39 produce evidence (documentary or otherwise), except that the

1 individual testifying is not exempt from prosecution and
2 punishment for perjury or contempt committed in testifying.

3 (6) The cost of any review, examination, audit, or investigation
4 made by the commissioner under Section 1280.7 of the Insurance
5 Code shall be paid to the commissioner by the person subject to
6 the review, examination, audit, or investigation, and the
7 commissioner may maintain an action for the recovery of these
8 costs in any court of competent jurisdiction. In determining the
9 cost, the commissioner may use the actual amount of the salary or
10 other compensation paid to the persons making the review,
11 examination, audit, or investigation plus the actual amount of
12 expenses including overhead reasonably incurred in the
13 performance of the work.

14 The recoverable cost of each review, examination, audit, or
15 investigation made by the commissioner under Section 1280.7 of
16 the Insurance Code shall not exceed twenty-five thousand dollars
17 (\$25,000), except that costs exceeding twenty-five thousand dollars
18 (\$25,000) shall be recoverable if the costs are necessary to prevent
19 a violation of any provision of Section 1280.7 of the Insurance
20 Code.

21 (r) Any shares or memberships issued by any corporation
22 organized and existing pursuant to the provisions of Part 2
23 (commencing with Section 12200) of Division 3 of Title 1,
24 provided the aggregate investment of any shareholder or member
25 in shares or memberships sold pursuant to this subdivision does
26 not exceed three hundred dollars (\$300). This exemption does not
27 apply to the shares or memberships of that corporation if any
28 promoter thereof expects or intends to make a profit directly or
29 indirectly from any business or activity associated with the
30 corporation or the operation of the corporation or from
31 remuneration, other than reasonable salary, received from the
32 corporation. This exemption does not apply to nonvoting shares
33 or memberships of that corporation issued to any person who does
34 not possess, and who will not acquire in connection with the
35 issuance of nonvoting shares or memberships, voting power
36 (Section 12253) in the corporation. This exemption also does not
37 apply to shares or memberships issued by a nonprofit cooperative
38 corporation organized to facilitate the creation of an unincorporated
39 interindemnity arrangement that provides indemnification for

1 medical malpractice to its physician and surgeon members as set
2 forth in subdivision (q).

3 (s) Any security consisting of or representing an interest in a
4 pool of mortgage loans that meets each of the following
5 requirements:

6 (1) The pool consists of whole mortgage loans or participation
7 interests in those loans, which loans were originated or acquired
8 in the ordinary course of business by a national bank or federal
9 savings association or federal savings bank having its principal
10 office in this state, by a bank incorporated under the laws of this
11 state or by a savings association as defined in subdivision (a) of
12 Section 5102 of the Financial Code and which is subject to the
13 supervision and regulation of the Commissioner of Financial
14 Institutions, and each of which at the time of transfer to the pool
15 is an authorized investment for the originating or acquiring
16 institution.

17 (2) The pool of mortgage loans is held in trust by a trustee which
18 is a financial institution specified in paragraph (1) as trustee or
19 otherwise.

20 (3) The loans are serviced by a financial institution specified in
21 paragraph (1).

22 (4) The security is not offered in amounts of less than
23 twenty-five thousand dollars (\$25,000) in the aggregate to any one
24 purchaser.

25 (5) The security is offered pursuant to a registration under the
26 Securities Act of 1933, or pursuant to an exemption under
27 Regulation A under that act, or in the opinion of counsel for the
28 issuer, is offered pursuant to an exemption under Section 4(2) of
29 that act.

30 (t) (1) Any security issued or guaranteed by and representing
31 an interest in or a direct obligation of an industrial loan company
32 incorporated under the laws of the state and authorized by the
33 Commissioner of Financial Institutions to engage in industrial loan
34 business.

35 (2) Any investment certificate in or issued by any industrial
36 loan company that is organized under the laws of a state of the
37 United States other than this state, that is insured by the Federal
38 Deposit Insurance Corporation, and that maintains a branch office
39 in this state.

1 ~~SEC. 8.~~

2 *SEC. 10.* Section 25101 of the Corporations Code is amended
3 to read:

4 25101. The following securities are exempt from the provisions
5 of Section 25130:

6 (a) Any security issued by a person that is the issuer of any
7 security listed on a national securities exchange, if the exchange
8 is certified by rule or order of the commissioner.

9 (b) The exemption provided by subdivision (a) does not apply
10 to securities offered pursuant to a registration under the Securities
11 Act of 1933 or pursuant to the exemption afforded by Regulation
12 A under that act if the aggregate offering price of the securities
13 offered pursuant to that exemption exceeds fifty thousand dollars
14 (\$50,000).

15 ~~SEC. 9.~~

16 *SEC. 11.* Section 25117 of the Corporations Code is amended
17 to read:

18 25117. (a) An evidence of indebtedness, and the purchasers
19 or holders thereof, shall be exempt from the usury provisions of
20 Section 1 of Article XV of the California Constitution if (1) the
21 evidence of indebtedness is rated or provisionally rated by Standard
22 & Poor's Corporation as AAA, AA, A, BBB, or investment grade
23 commercial paper, or by Moody's Investors Service, Inc. as Aaa,
24 Aa, A, Baa, or investment grade commercial paper, including any
25 such ratings with "+" or "-" designation or other variations that
26 occur within these ratings, or has a rating or a provisional rating
27 by another nationally recognized rating agency or system, which
28 rating and agency or system have been certified by rule or order
29 of the commissioner, or (2) the issuer thereof either (A) has any
30 security listed or approved for listing upon notice of issuance on
31 a national securities exchange, if the exchange has been certified
32 by the commissioner, pursuant to subdivision (o) of Section 25100,
33 or (B) meets each of the following requirements:

34 (i) The issuer is a corporation which is subject to Section 13 of
35 the Securities Exchange Act of 1934.

36 (ii) The issuer had total shareholders' equity of at least one
37 million dollars (\$1,000,000) at the end of its most recent fiscal
38 year, and had consolidated net income, after all charges, including
39 taxes and extraordinary losses, and excluding extraordinary gains,
40 of at least five hundred thousand dollars (\$500,000) for three of

1 its last four fiscal years, including its most recent fiscal year. The
2 determination of total shareholders' equity and net income shall
3 be determined in conformity with generally accepted accounting
4 principles applicable to that fiscal year or years, on a consolidated
5 basis, or (3) the evidence of indebtedness is issued by any
6 corporation all of the outstanding shares of which are owned by
7 an issuer which meets the requirements of subparagraph (A) or
8 (B) of paragraph (2).

9 (b) This section creates and authorizes a class of transactions
10 and persons pursuant to Section 1 of Article XV of the California
11 Constitution.

12 (c) Any evidence of indebtedness issued in compliance with
13 this section shall be entitled to the benefits of the usury exemption
14 contained in this section regardless of whether subsequent to its
15 issuance the evidence of indebtedness is determined by a court of
16 competent jurisdiction to be a "security."

17 ~~SEC. 10.~~

18 *SEC. 12.* Section 25211 of the Corporations Code is amended
19 to read:

20 25211. (a) The application for a certificate as a broker-dealer
21 shall be accompanied by the consent to service of process specified
22 in Section 25240 and, unless filed pursuant to subdivision (b), shall
23 contain such information in such detail relating to the applicant
24 and any persons associated with him or her as the commissioner
25 may by rule require.

26 (b) A broker-dealer registered under the Securities Exchange
27 Act of 1934 who is a member of the New York Stock Exchange,
28 ~~the American Stock Exchange~~ *NYSE Amex*, the NYSE Arca, or
29 the Financial Industry Regulatory Authority, and who has not had
30 any certificate as a broker-dealer, investment adviser or agent
31 denied or revoked under this law or any predecessor statute, may
32 be licensed by notification pursuant to this subdivision by filing
33 with the commissioner an application setting forth the following
34 information in such form and detail as the commissioner may by
35 rule require:

36 (1) Such information as is necessary to identify the broker-dealer
37 and its offices in this state, and the location of its records and
38 principal office.

1 (2) Such information as is necessary to establish that the
2 broker-dealer meets the requirements for licensure by notification
3 under this subdivision.

4 (3) The consent to service of process specified in Section 25240.

5 (4) Such information as the commissioner may require as to the
6 jurisdictions in which the broker-dealer is licensed or registered
7 and as to the nature of the business conducted by the broker-dealer.

8 (c) Unless a proceeding has been instituted under Section
9 25212, a certificate under subdivision (b) shall become effective
10 on the third business day after the application is filed with the
11 commissioner or upon the day the certificate is issued, whichever
12 first occurs. However, the commissioner may by order delay
13 effectiveness for a period not exceeding 15 business days (or for
14 an additional period with the consent of the applicant) if the
15 commissioner believes that the delay is necessary in the public
16 interest to determine if a proceeding should be instituted under
17 Section 25212. The commissioner may by rule or order waive that
18 provision of subdivision (b) which precludes application thereunder
19 by a person who has had a certificate denied or revoked under this
20 law or any predecessor statute if the commissioner finds the waiver
21 to be in the public interest. The commissioner, after appropriate
22 notice and opportunity for hearing in accordance with the
23 provisions of the Administrative Procedure Act, Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code, may by rule or order disqualify a
26 self-regulatory organization specified in subdivision (b) from the
27 provisions thereof. The commissioner may by rule establish
28 standards or criteria pursuant to which disqualification may be
29 made and he or she may disqualify upon a finding that the
30 self-regulatory organization fails substantially to comply with
31 those standards or criteria. Disqualification by the commissioner
32 shall not affect a certificate which has become effective pursuant
33 to this subdivision prior to the effective date of that rule or order
34 of disqualification but each person licensed pursuant to subdivision
35 (b) upon the basis of membership in that organization shall, within
36 90 days after the effective date of that rule or order, or such
37 additional time as the commissioner may allow, file with the
38 commissioner a complete and current application in the form
39 required pursuant to subdivision (a). If a broker-dealer licensed
40 pursuant to subdivision (b) ceases to meet the qualifications for

1 licensing pursuant to that subdivision, he or she shall, within 10
2 days after that event, file with the commissioner a complete and
3 current application in the form required pursuant to subdivision
4 (a).

5 (d) An application for a certificate as a broker-dealer, with
6 respect to a broker-dealer to be formed or organized, may be made
7 by a licensed broker-dealer to which the broker-dealer to be formed
8 or organized is to be the successor. The application shall contain
9 such information in such detail relating to the applicant and to the
10 successor and any person associated with the applicant or the
11 successor as the commissioner may by rule require. The application
12 shall become effective and the successor may transact business as
13 a broker-dealer 30 days after the receipt of the application by the
14 commissioner or within such shorter period of time as the
15 commissioner may determine, unless an order has been entered
16 under Section 25212 denying a certificate to the successor or a
17 proceeding looking toward an order has been instituted under that
18 section. The certificate shall terminate on the 45th day after the
19 effective date thereof, unless prior thereto the successor shall, in
20 accordance with such rules as the commissioner may prescribe,
21 adopt the application as its own and file the consent to service of
22 process specified in Section 25240.

23 ~~SEC. 11.~~

24 *SEC. 13.* Section 25219 of the Corporations Code is amended
25 to read:

26 25219. Notwithstanding any other provision of this division,
27 if in his or her opinion the public interest and the protection of
28 investors so require, the commissioner is authorized summarily to
29 suspend all over-the-counter trading in this state by broker-dealers
30 and agents in any security or summarily to suspend all trading on
31 a national securities exchange located in this state in any security
32 (provided, in the case of trading on that exchange, that the security
33 is not listed on any national securities exchange located outside
34 this state on which trading has not been suspended) for a period
35 not exceeding 90 days, and for successive periods of 90 days. No
36 broker-dealer or agent shall effect any transaction (other than an
37 unsolicited brokerage transaction effected on a national securities
38 exchange located outside this state) in, or induce or attempt to
39 induce the purchase or sale of, any security in this state in which

1 trading is in any manner suspended under this section, except in
2 performance of a contract previously entered into.

3 ~~SEC. 12.~~

4 *SEC. 14.* Section 25231 of the Corporations Code is amended
5 to read:

6 25231. (a) Any investment adviser, or any person who
7 contemplates becoming an investment adviser, may apply for a
8 certificate to act as an investment adviser by filing with the
9 commissioner an application. The application shall be accompanied
10 by the consent to service of process specified in Section 25240
11 and shall contain information, in such form and detail, as the
12 commissioner may by rule prescribe.

13 (b) Unless otherwise provided by rule or order of the
14 commissioner, all investment adviser and investment adviser
15 representative applications, amendments, reports, notices, related
16 filings, and fees required to be filed with the commissioner
17 pursuant to this title shall be filed electronically with and
18 transmitted to the Web-based Investment Adviser Registration
19 Depository operated by the Financial Industry Regulatory
20 Authority.

21 ~~SEC. 13.~~

22 *SEC. 15.* Section 25247 of the Corporations Code is amended
23 to read:

24 25247. (a) Upon written or oral request, the commissioner
25 shall make available to any person the information specified in
26 Section 6254.12 of the Government Code and made available
27 through the Public Disclosure Program of the Financial Industry
28 Regulatory Authority with respect to any broker-dealer or agent
29 licensed or regulated under this part. The commissioner shall also
30 make available the current license status and the year of issuance
31 of the license of a broker-dealer. Any information disclosed
32 pursuant to this subdivision shall constitute a public record.
33 Notwithstanding any other provisions of law, the commissioner
34 may disclose either orally or in writing that information pursuant
35 to this subdivision. There shall be no liability on the part of and
36 no cause of action of any nature shall arise against the State of
37 California, the Department of Corporations, the Commissioner of
38 Corporations, or any officer, agent, or employee of the state or of
39 the Department of Corporations for the release of any false or

1 unauthorized information, unless the release of that information
2 was done with knowledge and malice.

3 (b) Any broker-dealer or agent licensed or regulated under this
4 part shall upon request deliver a written notice to any client when
5 a new account is opened stating that information about the license
6 status or disciplinary record of a broker-dealer or an agent may be
7 obtained from the Department of Corporations, or from any other
8 source that provides substantially similar information.

9 (c) The notice provided under subdivision (b) shall contain the
10 office location or telephone number where the information may
11 be obtained.

12 (d) A broker-dealer or agent shall be exempt from providing
13 the notice required under subdivision (b) if a person who does not
14 have a financial relationship with the broker-dealer or agent,
15 requests only general operational information such as the nature
16 of the broker-dealer's or agent's business, office location, hours
17 of operation, basic services, and fees, but does not solicit advice
18 regarding investments or other services offered.

19 (e) Upon written or oral request, the commissioner shall make
20 available to any person the disciplinary records maintained on the
21 Investment Adviser Registration Depository and made available
22 through the Investment Advisor Public Disclosure Web site with
23 respect to any investment adviser, investment adviser
24 representative, or associated person of an investment adviser
25 licensed or regulated under this part. The commissioner shall also
26 make available the current license status and the year of issuance
27 of the license of an investment adviser. Any information disclosed
28 pursuant to this subdivision shall constitute a public record.
29 Notwithstanding any other provision of law, the commissioner
30 may disclose that information either orally or in writing pursuant
31 to this subdivision. There shall be no liability on the part of and
32 no cause of action of any nature shall arise against the State of
33 California, the Department of Corporations, the Commissioner of
34 Corporations, or any officer, agent, or employee of the state or of
35 the Department of Corporations for the release of any false or
36 unauthorized information, unless the release of that information
37 was done with knowledge and malice.

38 (f) Section 461 of the Business and Professions Code shall not
39 be applicable to the Department of Corporations when using a
40 national, uniform application adopted or approved for use by the

1 Securities and Exchange Commission, the North American
2 Securities Administrators Association, or the Financial Industry
3 Regulatory Authority that is required for participation in the Central
4 Registration Depository or the Investment Adviser Registration
5 Depository.

6 (g) This section shall not require the disclosure of criminal
7 history record information maintained by the Federal Bureau of
8 Investigation pursuant to Section 534 of Title 28 of the United
9 States Code, and the rules thereunder, or information not otherwise
10 subject to disclosure under the Information Practices Act of 1977.

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